

## REMARKS

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**Claim Objections**

Page 2 of the Office Action indicates that misnumbered claims 19 - 22 have been renumbered 20 - 23. Applicants wish to thank the Examiner for pointing this out and making this correction. Applicants have amended the dependency of Claims 20 - 22 to depend from Claim 19 as these claims had inadvertently been designated as depending from Claim 18.

**35 U.S.C. § 112 Rejections**

Claim 1 is rejected under 35 U.S.C. § 112, second paragraph for the reasons of record stated on page 2 of the Office Action. The Office Action indicates that Claim 1 recites the limitation "the benefit composition" and that there is insufficient antecedent basis for this limitation. Claim 1 has been amended to provide proper antecedent basis. As this rejection has now been overcome, Applicants respectfully request reconsideration and withdrawal of this rejection.

**35 U.S.C. § 102 Rejections**

Claims 1 - 4, 8 - 12, 17 - 21, and 23 are rejected under 35 U.S.C. § 102(b) as being unpatentable over U.S. Patent No. 5,980,583 issued to Staub et al. (hereinafter "Staub et al.") for the reasons of record stated at pages 2 and 3 of the Office Action. Applicants respectfully traverse this rejection. The present invention relates to a fabric article treating device which includes *inter alia* thermal protection means.

Staub et al. purports to relate to a method of manufacturing durable press garments by inserting garments into a tumbling apparatus in a manner to form a tunnel defined by the garments.

To anticipate a claim, the reference must teach every element of the claim. "A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference." M.P.E.P. § 2131 citing *Verdegaal Bros. v. Union Oil Co. of California*, 2 U.S.P.Q.2d 1051, 1053 (Fed. Cir. 1987). "The identical invention must be shown in as complete detail as is contained in the ... claim." M.P.E.P. § 2131 citing *Richardson v. Suzuki Motor Co.*, 9 U.S.P.Q.2d 1913, 1920 (Fed. Cir. 1989).

Staub et al. does not teach either expressly, inherently, or impliedly Applicants' claimed invention. In fact, the Office Action in making the rejection under 35 U.S.C. 102(b), does not provide any basis to indicate where each and every element of Applicants' claimed invention is disclosed in Staub et al. Hence, as Staub et al. does not anticipate Applicants' claimed invention, this rejection cannot stand. Applicants' respectfully request reconsideration and withdrawal of this rejection.

**35 U.S.C. § 103 Rejections**

Claims 5 and 13 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Staub et al. for the reasons of record stated on page 3 of the Office Action. Claims 6 and 7 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Staub et al in view of U.S. Patent No. 6,473,563 issued to Pletcher et al. (hereinafter "Pletcher et al.") for the reasons of record stated on pages 3 and

4 of the Office Action. Claim 21 is rejected under 35 U.S.C. §103(a) as being unpatentable over Staub et al in view of U.S. Patent No. 4,014,105 issued to Furgal et al. (hereinafter "Furgal et al.") for the reasons of record stated on page 4 of the Office Action. Applicants respectfully traverse these rejections.

"In order to establish a *prima facie* case of obviousness, three basic criteria must be met: First, there must be some suggestion or motivation, either in the reference itself or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference must teach or suggest all the claim limitations. The teaching or suggestion to make the claimed combination and the reasonable expectation of success *must both* be found in the prior art, and *not* based on applicant's disclosure (emphasis added)." M.P.E.P. §2142 citing *In re Vacek*, 947 F.2d 488, 20 U.S.P.Q.2d 1438 (Fed. Cir. 1991).

"The initial burden is on the Examiner to provide some suggestion of the desirability of doing what the inventor has done. To support the conclusion that the claimed invention is directed to obvious subject matter, either the references must expressly or impliedly suggest the claimed invention or the examiner must present a convincing line of reasoning as to why the artisan would have found the claimed invention to have been obvious in light of the teachings of the references." M.P.E.P. §2142 citing *Ex parte Clapp*, 227 U.S.P.Q. 972, 973 (Bd. Pat. App. & Inter. 1985).

The Office Action does not meet the initial burden of showing that the prior art either expressly or impliedly suggests the claimed invention as required by M.P.E.P. §2142.

As indicated above, Staub et al. purports to relate to a method of manufacturing durable press garments by inserting garments into a tumbling apparatus in a manner to form a tunnel defined by the garments. With regard to Claims 5 and 13, Staub et al., does not teach or suggest either expressly or impliedly all the claim limitations of Applicants' invention. Yet further, with specific regard to thermal conductivity, the Office Action indicates that though Staub et al. does not teach the specific thermal conductivity, this limitation would have been obvious to one of ordinary skill in the art as it would have been an optimum value of a result effective variable involving only routine skill in the art. To support this assertion the Office Action cites *In re Boesch*, 617 F.2d 272, 205 USPQ 215 (CCPZ 1980).

Applicants disagree with this assertion. *In re Boesch* relates to parameters that were disclosed in prior art references. With respect to Applicants' present invention, as the Office Action indicates, there is no disclosure of thermal conductivity in Staub et al. Hence, as this limitation is not disclosed either expressly or impliedly by Staub et al., Claims 5 and 13 are unobvious in view of Staub et al.

With regard to the obviousness rejection of Claims 6 and 7 as being unpatentable over Staub et al. in view of Pletcher et al. As the Office Action indicates, Staub et al. does not disclose utilizing an electrically charged liquid. Pletcher et al. purports to relate to a method and apparatus for inducing electric charge onto home care formulations. The Office Action on page 4 states that "*Pletcher et al. teaches electrically charging a benefit composition leads to greater attraction between the fabric and the composition and, therefore, more efficient treatment...*". Applicants

respectfully disagree with this as Pletcher et al. does not disclose either expressly or impliedly utilizing an electrically charged liquid to treat fabric. Furthermore, Pletcher et al. does not disclose expressly or impliedly utilizing an electrically charged liquid to treat fabric in a clothes drying appliance. Thus, there is no motivation to combine this reference with Staub et al. as neither Staub et al. nor Pletcher et al. suggest either expressly or impliedly *inter alia* applying an electrically charged liquid onto fabric in a clothes drying appliance. Hence, as the initial requirement to establish a prima facie case of obviousness has not been met, Claims 6 and 7 of the instant invention are unobvious over Staub et al. in view of Pletcher et al., Applicants respectfully request reconsideration and withdrawal of these rejections.

Claim 21 is rejected under 35 U.S.C. §103(a) as being unpatentable over Staub et al. in view of U.S. Patent No. 4,014,105 issued to Furgal et al. (hereinafter "Furgal et al.") for the reasons of record stated on page 4 of the Office Action. Furgal et al. purports to relate to a dispenser which holds a composition to be applied to laundry in a dryer. The dispenser allows the liquid to drip or flow into the tumble dryer. [See Furgal et al. column 3, lines 1 - 15 and column 4, lines 35 - 45]. Applicants respectfully traverse this rejection. Staub et al. in view of Furgal et al. does not suggest either expressly or impliedly *inter alia* providing a fabric article treating device having a thermal protection means.

Hence, as Claim 21 is unobvious over Staub et al. in view of Furgal et al., Applicants respectfully request reconsideration and withdrawal of this rejection.

As the present invention is not obvious in light of the above references, Applicants respectfully request that the rejections under 35 U.S.C. §103(a) be reconsidered and withdrawn and the claims allowed.

**SUMMARY**

This is responsive to the Office Action dated June 2, 2004. Applicants hereby petition for a one month extension of time to respond to this Action. This action is being timely filed with a one month extension of time as October 2, 2004 fell on a Saturday. Please charge any fees associated with this response to Deposit Account No.: 16-2480. As the rejections under 35 U.S.C. §112, §102, and §103 have been overcome, Applicants respectfully request these rejections be withdrawn and the claims allowed.

Respectfully submitted,

FOR: PANCHERI ET AL.;

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